Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF PUBLIC SERVICE TELEPHONE COMPANY, INC., SOUTH SLOPE COOPERATIVE TELEPHONE CO., INC., TOWNES TELECOMMUNICATIONS, INC., AND VENTURE COMMUNICATIONS COOPERATIVE

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SUMMARY

The commenters applaud the Commission's initiative in moving forward on needed changes to address the problem of carrier arbitrage and to reform the universal service funding mechanism. However, the commenters urge the Commission to proceed with caution. Nearly all of the proposed reforms, found in the Order and Further Notice of Proposed Rulemaking (Order/FNPRM) released on November 5, 2008, will have disproportionately negative impacts on the rural incumbent local exchange carriers committed to bringing service to the nation's most costly regions.

The commenters generally oppose the Order/FNPRM's sweeping changes to intercarrier compensation. Many of the proposed changes, including the preemptive reduction of state access rates and the introduction of the radical Faulhaber cost model, are bad public policy and flawed legally. The Commission should take a more calibrated approach to the arbitrage problems, to which, as discussed herein, it has already proposed important steps in the right direction.

Similarly, the Commission's proposals on universal service reform go too far. The proposal to freeze universal service support suffers from an absence of critical information as to whether the resulting amounts will be sufficient, as required by the Communications Act. The Order/FNPRM's proposals on reverse auctions are also wrong-headed. They do not take into account many factors unique to the rural incumbents, such as how the uncertainty inherent in the reverse auction system will interfere with infrastructure financing. Moreover, given the nature of reverse auctions themselves, aimed at the lowest bidder, very real concerns exist as to whether amounts awarded will be sufficient under the Act.

The commenters do support the elimination of the identical support rule and the adoption of a broadband pilot program for lifeline and link-up, although the latter may have its funds

capped at unrealistically low levels. The commenters agree with the very real need for reform of intercarrier compensation and universal service, but urge the Commission to take a more measured approach as outlined in these comments.

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Introduction

The above listed rural telephone companies (hereinafter referred to as ILECs or commenters) file these Comments on the Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, released November 5, 2008 ("Order/FNPRM") in the above captioned dockets. All commenters provide telephone exchange and exchange access service in rural portions of the United States, and are Universal Service Fund ("USF") recipients, having been designated Eligible Telecommunications Carriers ("ETCs") by their respective state commissions. Both USF and intrastate and interstate access constitute critical revenue streams in the high cost environment in which these companies operate.

Public Service Telephone Company, Inc., is a rural incumbent LEC serving approximately 10,500 access lines in west central Georgia, and covering a geographic area of approximately 1055 square miles. Venture Communications Cooperative is a telephone cooperative serving portions of central and northeastern South Dakota. It serves approximately 14,000 access lines covering approximately 8,000 square miles. South Slope Cooperative Telephone Co., Inc. is a telephone cooperative serving approximately 12,492 access lines in eastern Iowa. This does not include South Slope's CLEC operations. Its ILEC service area covers approximately 308 square miles. Townes Telecommunications, Inc. has six rural ILEC operating companies located in states between Colorado and Florida. Its largest rural ILEC serves 9,094 access lines covering an area of 589 square miles.

The Order/FNPRM proposes sweeping and controversial changes to the core mechanisms that underpin the business of providing exchange and exchange access. The proposed use of reverse auctions to award USF, for instance, constitutes a lurch in agency policy that will likely retard the goals of universal service. The record in the universal service proceeding demonstrates that growth in the high cost fund is a problem that merits the full attention of the Commission. The careful study of the Federal State Joint Board and its calibrated recommendation for reforming the high cost fund are rejected in the Order/FNPRM. The proposed use of reverse auctions constitutes a meat cleaver approach to the problem of high cost fueled by competitive ETCs -- mainly wireless companies. See Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent to Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-185, Memorandum Opinion and Order, 22 FCC Rcd 19517 (2007).

Specifically, the elimination of the identical support rule would have gone a long way toward solving the runaway growth experienced by the high cost fund in the last few years. High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337,CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007). Instead, the reverse auction policy option is the only substantial option proposed in the Order/FNPRM. The likely result will be a diminution of universal service in rural areas, as planning, construction, and financing are hampered by the uncertainty of auctions, and as rural ILECs are pitted against national players like Verizon, with deep pockets and little commitment to the rural communities. Moreover, the very idea of reverse auctions, bound at its core to the cheap and to the uncertain, runs headlong into statutory standards requiring comparable service among geographic regions, and specific and predictable universal service funding. See 47 U.S.C. §§254(b)(3) and (5)(requiring universal service policy to include requirements that rural consumers have access to services that "are reasonably comparable to those provided in urban areas" and that support mechanisms be "specific and predictable.")

The Order/FNPRM's proposal to eliminate intrastate and interstate access charges, as a practical matter, and to push down access rates to levels approaching zero (along with reciprocal compensation rates), is likewise a bad policy choice. At bottom, administrative law requires agency decision-making to be rational based upon the policy options before it and the administrative record. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 462 US 29, 43 (1983); Evangelical Lutheran Church in America v. Immigration and Naturalization Service, 288 F.Supp 2d 32, 47 (D.C. Cir. 2003). These commenters respectfully submit that the instant proposal fails this test. It is not rational to virtually eliminate all intercarrier revenues based upon the concern that some carriers are not paying their way (politely called "arbitrage") and because the Commission believes that some ILECs are simply earning too much money. See Order/FNPRM, App'x C, paras 173-180. Moreover, one of the largest factors driving "arbitrage" is the Commission's historic reluctance to force IP traffic to pay for its use of the PSTN. The Order/FNPRM, however, perpetuates that irrational policy by continuing the free ride for IP-based telephony – at least as far as the access charge framework. The attempted preemption of state access charges also weakens this plan. Bound to be reversed by a reviewing Court of Appeals as overstepping the bounds of federal preemption, and as a misapplication of other statutory bases relied upon in the Order/FNPRM, the "reform" plan advocated in Appendices A and C is thus likely to be undercut by at least two non-uniform rates -- differing interstate and intrastate access.

These two subjects -- the proposal to virtually eliminate intercarrier charges and the use of reverse auctions -- are discussed in order. Finally, these comments discuss meritorious alternative changes to the intercarrier compensation regime and universal service.

The Proposal to Preempt State Access Regimes Must be Rejected

The Order/FNPRM leaves no doubt that the proposed plan requires states and carriers to reduce intrastate access charge rates over the course of the plan.

Order/FNPRM, App'x C, paras. 187-190. Indeed, the plan would "permit" the states to manage rates, including local reciprocal compensation functions, which functions presumably will include traffic formerly known as "access". Id. At para. 190. Moreover, the FCC imposes a specific rate on the states -- it must be "at or below $.0007 per minute of use." Id. at para. 193.

Tellingly, the FCC's analysis of its own legal authority to accomplish such preemption is largely absent from the discussion. For instance, the Order/FNPRM's discussion on this score is couched in a discussion of Sections 251(b)(5) and 251(g) of the 1996 Act. 47 U.S.C. Sections 251(b)(5) and 251(g); Order/FNPRM, App'x C, at paras. 202-224. Indeed, the document represents that no state preemption would occur under the plan. With due respect to the proposal, however, this misstates the actual effect of the proposal.

The Commission must understand that its plan will be reviewed through the lens of a preemption analysis, and we respectfully submit that it will not survive appellate review. See Letter from New England Conference of Public Utilities Commissioners to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 01-92; 06-122; 04-36; CC Docket No. 96-45 (October 17, 2008 Ex Parte Letter). Indeed, the Order/FNPRM fails to explain the source of the FCC's jurisdiction over the states, and this defect should be telling to the Commission.

Although, as discussed, the necessary preemption analysis is missing, the Order/FNPRM does assert jurisdiction over intrastate traffic pursuant to Section 251(g) of the Act: "By placing all traffic under the umbrella of one compensation scheme, we eliminate jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services." Order/FNPRM at para 216 (emphasis supplied). But, this analysis is wrong, too. Neither Section 251(b)(5) nor Section 251(g) permit the Commission to supersede intrastate access regimes and, indeed, the Order/FNPRM's conclusion here is contradicted by prior Commission findings. See, Letter from Brad E. Mutschelknaus and Genevieve Morelli, Counsel for Broadview Networks, Inc., Cavalier Telephone, NuVox and XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, passim (filed October 23, 2008).

Accordingly, the proposal to force intrastate access into the proposed unitary reciprocal compensation scheme is flawed legally. The Commission should instead consider a voluntary mechanism by which carriers can unify their intercarrier rates based upon an off-setting mechanism in the universal service fund for that purpose. That may take time, but as discussed following, the Commission's proposed pricing standard must be better developed in further proceedings. Moreover, the proposed preemption of intrastate access will, if adopted, produce the sort of protracted court litigation that will haunt this effort for some time.

The Commission Should More Carefully Study the Idea of Reducing Rates, a Fortiori

There is no question that the engine driving the unitary rate plan is the Commission's erroneous expectation that the "new" reciprocal compensation rates (covering cost for the service formerly known as "access") will be dramatically lower. See, e.g. Order/FNPRM, App'x C at para. 197 (FCC expects that states will apply new "additional costs" standard for final reciprocal compensation rates that will be "at or below" $.0007 per minute of use). The Commission's proposed basis for departing from the current TELRIC pricing standard is statements that TELRIC has produced rates that are "excessively high" and "are generally too high". Id., at para. 234. In its stead, the Order/FNPRM proposes to require a scorched earth form of incremental pricing (to justify expectations that prices will be equal to or less than $.0007 per minute) and which were discussed by economist Gerald Faulhaber in 1975. Id. at para 243 and n. 660. The states will be required to implement this form of pricing. Id. at para. 266.

The proposed use of this "Faulhaber" pricing is premature, given the absence of any real cost information as to how it will function – particularly with respect to interstate and intrastate access services, which up until now, have been based upon embedded cost pricing. Indeed, the Order/FNPRM notes the absence of any "cost studies or analyses in the record" to estimate termination costs using Faulhaber's definition (id. at para. 248). This is hardly surprising given that scarcely six weeks have elapsed since press reports noted that this plan was on the table. See, e.g. Martin Rolls out Plan to Reform Intercarrier Comp, Universal Service, TR Daily (October 15, 2008).

The rural ILEC commenters here, having had insufficient time to perform detailed economic costing and impact analyses, are very concerned about the effect of such Faulhaber pricing upon the rural ILEC industry and the public which it serves. For instance, the Order/FNPRM proposes to increase end-user charges to offset some of the billions of dollars of revenue requirement to be displaced by the proposed plan, including for intrastate revenue requirements. Id., App'x C, at paras. 294-95. However, rural customers often inhabit economically depressed areas, in comparison to their more urban and suburban fellow citizens, and may exhibit higher demand elasticity. This is particularly true in the current sluggish economy. Simply put, the erosion of support historically provided by the division of revenue process, and later access charges, and through end user rate increases proposed in Appendices A and C, may actually retard universal service in rural areas -- a critical policy issue, but one which is completely unattended in the proposals.

Moreover, the proposed $.0007 reciprocal compensation cap appears to be an arbitrary number. This number, applied industry-wide in the proposal, would coincide with an individual carrier's cost only as a matter of pure coincidence. It is noteworthy that the proposal's $.0007 rate cap is based upon earlier intercarrier agreements, accordingly deemed by the Commission to constitute evidence that the rate(s) are "just and reasonable." Order/FNPRM, App'x C, at para. 194 and n. 515.

If such is the case, however, additional reciprocal compensation rates should be considered, particularly those between rural ILECs and CLECs/CMRS carriers. In this respect, we note that NTCA has earlier catalogued substantially higher rates. In Iowa, over 270 interconnection agreements are on file between rural ILECs and CMRS carriers at $0.02. In South Dakota, such agreements reflect rates between $0.02 and $0.03 per minute.[1] Public Service Telephone Company has agreements on file having reciprocal compensation rates at $0.017 per minute. Townes Telecommunications Inc.'s telephone operating companies have interconnection agreements ranging from $0.018 per minute to as high as $0.035 per minute.

All of these rates, which were freely negotiated in arm's length deals, should be considered "just and reasonable" too. The rationale that underpins the Commission's reasoning to extend that status to the lower rate in the circumstance of ISP-bound traffic -- that they are the product of earlier negotiation -- is equally applicable here.

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[1] See Letter from Daniel Mitchell to Marlene H. Dortch, supra, p. 6.

In addition to these rural ILEC rates, which have not yet been considered by the Commission, the Order/FNPRM indicates a too hasty analysis as to Faulhaber pricing. In this respect, notwithstanding the admitted lack of cost analyses using Faulhaber techniques, the Order/FNPRM analyzes the cost of terminating calls "on modern circuit switches." Id., at para. 249. The proposal relies upon cost estimates provided by Sprint Nextel, which it finds "provides an upper bound" on rates that might be produced under a Faulhaber approach (as earlier noted, the record doesn't have any of this information). Id. The proposal then acknowledges that NuVox questions some of Sprint Nextel's assumptions, then, incredibly, tells NuVox to raise this at the state level. Id. (App'x C) at n.674.

The Commission must understand that this proposal would adopt a costing standard – and it credits the Sprint Nextel information as supporting its standard. But directing NuVox to raise its criticisms elsewhere is an expedient shortcut not to deal with facts that may be inconvenient to the proposal. The commenters here respectfully suggest that this is a further indication that the radical Faulhaber rate–setting approach is not yet ready for prime time. The Commission should carefully quantify the costs of transport and termination, including rural costs, and ensure that the radical assumptions that traffic can be terminated for nearly nothing are actually true -- including access service. And, as discussed below, the Commission should further consider whether the entire effort of pushing intercarrier revenues down to next to nothing is worth the candle.

The Commission Should Consider Fixing
The Real Problem Underlying Carrier Arbitrage

As discussed earlier in these Comments, the principal malady targeted by the proposed changes appears to be the issue of what is known colloquially in the industry as "phantom traffic" or carrier "arbitrage." The Order/FNPRM proposes changes to deal with unidentified traffic including required signaling information and financial responsibility for carriers delivering unidentified traffic. Id. (App'x C) at paras. 332-338. The commenters applaud the Order/FNPRM's focus on this very real problem, and respectfully submit that addressing the problem of unidentified traffic is an important part of the solution. Along these lines, the Commission is urged to further address the issue of Virtual NXX practice, whereby carriers split the rating of traffic from the routing of traffic in the Local Exchange Routing Guide ("LERG"). Courts and regulatory commissions have dealt with this problem differently,[2] but, at bottom, it is a form of arbitrage to avoid the payment of tariffed charges. The Commission earlier included this issue in these proceedings (Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 13859 (2002)) and it should clarify here that split rated and routed number blocks represent a prohibited form of arbitrage.

Against this background, the commenters respectfully suggest that many of the Order/FNPRM's proposals should be narrowed. As earlier discussed, the proposed preemption of state rate-setting authority over intrastate access should be rejected. The

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[2] See Global NAPS v. Alltel Georgia, Inc., Order on Disputed Issues, Ga. Publ. Svc. Cmmn. Docket No. 14529-U; Request for Emergency Relief Filed by Verizon, Order on Review of Hearing Officer's Initial Decision, Ga. Publ. Svc. Cmmn., Docket No. 24752; Qwest Corp. v. Washington State Utilities and Transp. Cmm'n. 484 F.Supp 2d 1160 (W.D. Wash. 2007); Global NAPs, Inc. v. Verizon New England, Inc., 505 F.3d 43 (1st Cir 2007).

proposal to combine interstate access and reciprocal compensation under an untested pricing regime that results in rates close to zero should also be rejected. The Commission should examine such unified pricing, including the use of TELRIC pricing, without unfounded assumptions, which are indeed belied by rate of return regulation that the ILEC industry is generally over-earning.

The Commission also should narrow its proposal at Appendix C paragraph 270 concerning the ability of the calling party service provider to choose whether to interconnect directly or indirectly with the called party service provider. Many of these arrangements are already governed by interconnection agreements and the Commission should make clear that any such proposal does not impact existing agreements.

The Commission should also retreat from the Order/FNPRM's improvident conclusion that circuit switched/IP calls (in either direction) are "information services" in nature. Id. (App'x C) at para. 204. This finding is not only doctrinaire (the Order/FNPRM having failed to consider the different service characteristics of IP-based offerings), but an illogical response to the arbitrage problem which the Order/NPRM seeks to address. The failure of IP-based traffic to pay its way for traffic that looks and sounds like circuit switched traffic is a particularly pernicious form of arbitrage. The Order/FNPRM's finding on this score will only increase the velocity of carrier conversion to IP platforms in order to game the new system. As earlier discussed, any new paradigm is not likely to include intrastate access charges, at least, as part of a unitary rate. The Commission should plug this loophole, rather than perpetuating it, so that carrier arbitrage will have a rational answer.

Finally, the Commission should recognize the harm that will be visited upon both the public and carrier community as part of the instant "reform" plan. Evidence already exists that telephone financing sources are concerned about the effect on the industry. Letter from Lawrence Zawalick, Senior Vice President, Rural Telephone Finance Cooperative, to Kevin Martin et al., Commissioners, FCC, CC Docket 01-92 at 1 (filed Sept. 30, 2008). The plan additionally proposes to further burden end-users with increased local rates, but with no apparent benefits. In this respect, there is conspicuous silence in the Order/FNPRM about any of the major long distance carriers committing to flowing through their service rate reductions, despite the multi-billion dollar savings that the proposals (both Appendices A and C) represent. Thus, there is no net benefit to the public, only a wealth transfer from rural and other ILECs to the pockets of Verizon, AT&T and others.

The Commission accordingly is urged to reform intercarrier compensation along the lines suggested in these comments. This includes enforcing rules to deal with unidentified traffic, by closing the information service loophole for IP-based traffic, and by further study of unifying interstate access rates and reciprocal compensation rates, based upon incremental pricing.

Universal Service Support for Rural ILECs should be Maintained

As indicated, the ILECs are small rural carriers that qualify for federal universal service support. The continued receipt of federal universal service support is essential for the ILECs to provide, maintain and upgrade facilities and services for which the support is intended and to keep rates comparable to those in non-rural areas and affordable. Accordingly, the ILECs support maintaining universal service for rural carriers as is.

The Commission should not adopt the proposal to maintain the current system of support for rural ILECs for only two years. See Order/FNPRM, App'x C, at paras 12-18. There is no evidence in the record that freezing support at 2010 levels would be "sufficient," as required by the Act. See 47 USC 254(b)(5). In addition, there is no evidence in the record that rates would be comparable or affordable if high cost support is frozen.

Nor should the Commission adopt the proposal to require rural carriers to offer broadband Internet access service throughout their study areas within five years to remain eligible to receive federal support. See Order/FNPRM, App'x C, at paras 19-23; 28-32. There is no evidence in the record that 2010 support levels would be sufficient to build out and maintain broadband service and access to broadband Internet access service, as defined in the Commission's proposed order. On the contrary, the record evidence indicates that some incumbent LECs will not be able to meet the broadband requirement if high cost support is frozen at 2010 levels. See Order/FNPRM, App'x C, footnote 97. Rather, the rural ILECs contend that the Commission should include broadband as a supported service for universal service purposes and provide sufficient federal support for the provision and maintenance of broadband service.

The ILECs also oppose the proposal to use reverse auctions if a rural ILEC fails to commit to offer broadband services throughout its supported service area or fails to meet the broadband requirement in five years. See Order/FNPRM, App'x C, at paras 32-48. Reverse auctions are not an appropriate mechanism for distributing high cost support in rural ILEC service areas. As stated, the continued receipt of federal universal service support is essential for the ILECs to provide, maintain and upgrade facilities and services for which the support is intended and to keep rates comparable to those in non-rural areas and affordable. Further, rural ILECs rely on loans for significant infrastructure investments and reliable high cost support is necessary for loan repayment. The uncertainty created by reverse auctions regarding the future availability of support will adversely impact the ability of small carriers to obtain loans or increase the interest rates to unaffordable levels. In fact, a leading source of investment loans for rural telephone companies has stated that the uncertainty produced by reverse auctions would significantly reduce the availability of debt capital for the financing of rural infrastructure investment. See Comments of CoBank, ACB, WC Docket No. 05-337 and CC Docket No. 96-45, April 17, 2008, p.4.

The Commission's auction proposal does not address these concerns. Under the Commission's proposal, an auction reserve price would be set at the incumbent ILEC's current level of support. Order/FNPRM, App'x C, at paras 36-37. The winning bidder would be the one who commits to offer the highest speed of broadband service throughout the entire service area at a bid amount that is equal to or less than the reserve price. Id. at 44. The Commission would require winning bidders to comply with all the requirements of the order by the end of a ten-year build-out period. Id. at 41. Support would be transitioned away from the ILEC to the winning bidder as the winning ETC builds out the geographic areas as designated by the ILEC. Id. Thus, there will continue to be some period of time when the rural ILEC must continue to provide service while its high cost support shrinks. This uncertainty will impact the ability of the carrier to obtain any financing for future projects and could jeopardize financing already obtained. See Comments of CoBank, supra.

The Commission's specific auction proposal also short changes rural ILECs and subscribers in two important ways. First, under the Commission's proposal, the rural ILEC must build out broadband facilities in 5 years; however, an auction winner would have ten years to build out broadband. Cp. Order/FNPRM, App'x C, para 28, with Order/FNPRM, App'x C at para 12. There is no justification for this inequitable treatment. Second, if the auction fails to produce a winning bid, the Commission will examine whether frozen high cost support is sufficient or whether some other change should be made to the area subject to auction. Order/FNPRM, App'x C, para 47. The ILECs contend that the better course of action would be for the Commission to examine whether frozen high cost support is sufficient before making any changes to universal service support for any rural ILEC. At a minimum, the Commission should examine whether frozen support is sufficient before stripping a rural ILEC of its support.

The ILECs support the elimination of the identical support rule. Under this mechanism, the support provided to competitive carriers has no relationship to the competitive carrier's costs which could lead to excessive support. Order/FNPRM, App'x C, para 5. In addition, the ILECs agree that support on this basis provides a competitive LEC with little incentive to invest in, or expand, its own facilities in areas with low population densities. Id. Further, as indicated, the elimination of the identical support rule will go a long way toward solving the runaway growth experienced by the high cost fund in the last few years.

The ILECs support a broadband pilot program for Lifeline and Link-Up customers. However, the Commission's proposed caps of such support may not be appropriate for rural areas. See Order/FNPRM, App'x C, at paras 73-75. By capping Lifeline and Link-up support at unrealistically low levels, the Commission may be eliminating the ability of subscribers in the most rural areas, where carrier costs are the highest, or subscribers with the lowest income, from benefiting from this program. Accordingly, the Commission should reexamine the support levels for this program to ensure that all eligible subscribers have the ability to participate in this program.

With respect to the Commission's proposal to reform universal service contributions to a number-based mechanism for residential subscribers, see Order/FNPRM, App'x C, at paras 101 et. seq., the ILECs offer the following comments. First, there is no evidence in the record that a number-based system for residential subscribers and another mechanism for business subscribers will lead to a system that treats all subscribers and contributing entities fairly. Second, it is not clear how a number-based system, especially one that only applies to residential subscribers, can be audited. For example, it has been the commenters' experience that wireless carriers currently do not distinguish between residential and business subscribers.

Third, the Commission's proposed special treatment of prepaid wireless service is not justified. The Commission proposes to assess prepaid wireless services a reduced universal service fee based on the number of minutes used by the average postpaid wireless customer in a month, capped at an amount equal to the current per month contribution per Assessable Number. See Order/FNPRM, App'x C, at paras 131-135. The Commission justifies this special treatment by stating that it is more difficult for wireless prepaid providers to pass-through their contribution assessments in light of their "pay-as-you-go" service offerings and because many prepaid wireless end users are low income consumers.

Neither explanation justifies the proposed special treatment. All other low-income consumers only qualify for special treatment with respect to universal service fees if they qualify for Lifeline. There is no justification for creating a new category of "low-income" consumers solely for prepaid wireless services. The rationale that it is more difficult for wireless prepaid providers to pass-through their contribution assessments in light of their "pay-as-you-go" service offerings also fails because there is no "right" or requirement for universal service contributors to pass-through their contribution assessments. Further, this proposal will give prepaid wireless services an unjustified cost advantage over wireline service. Accordingly, this proposal should not be adopted.

The Proposed Suspension or Modification Requirements Go Beyond the Act

The ILECs oppose a number of the Commission's proposed guidelines in connection with Section 251(f)(2) of the Act because they would improperly restrict the ability of states to grant suspensions or modifications as expressly allowed by the Act. Specifically, the ILECs oppose the Commission's proposal to find that any suspension or modification must be for a limited duration and cannot be indefinite. See Order/FNPRM, App'x C, at para 278. This conflicts with the express language of the Act which requires the state to grant a suspension or modification "for such duration as" the state commission finds necessary. 47 USC 251(f)(2). There is no requirement that a suspension or modification must be for a limited duration and there is no prohibition on a suspension or modification that could be indefinite. For the same reasons, the ILECs oppose the Commission's proposal to require a state to take a fresh look to determine whether a suspension or modification of more than 1 year should continue. See Order/FNPRM, App'x C, at para 285.

The ILECs oppose the Commission's suggestion that states require a LEC to demonstrate that it is taking concrete steps to enable it to comply with relevant requirements once a suspension or modification ends. Id. at para 278. Requiring a carrier to expend resources during a suspension period would effectively negate the benefit of a suspension pursuant to Section 251(f)(2)(A)(i) and (ii).

The ILECs also oppose the Commission's proposed interpretation of Section 251(f)(2)(A)(i) and (ii). With respect to the word "significant" in Section 251(f)(2)(A)(i), the Commission finds that the Webster's Dictionary definition is reasonable. However, the Commission then concludes that only part of the definition justifies a finding by a state commission that an "adverse economic impact" is "significant." In addition, the Commission's proposal concludes that when considering Section 251(f)(2)(A)(i) and (ii), state commissions must evaluate the "net" impact on users of telecommunications services generally and the "net" economic burden, including an assessment of the benefits of the regulatory requirements that the ILEC seeks to have suspended or modified. Id. at paras 279. This interpretation is contrary to the express language of Section 251(f)(2)(A)(i) and (ii) and seeks to impermissibly restrict the ability of carriers to seek state commissions to grant suspension or modification petitions.

Conclusion

The commenters applaud the Commission's proposal to deal with carrier arbitrage. The failure of certain industry sectors to pay their way for use of the public network is a problem long overdue for resolution. Unfortunately, many of the Order/FNPRM's proposals go too far, most particularly the proposal to preempt intrastate access charges and to unify access rates and reciprocal compensation at rates approaching zero. The related proposal to classify circuit switched/IP traffic as "information services" likewise goes too far and is almost entirely harmful in its effect.

The Order/FNPRM's proposal to distribute universal service funding by the use of reverse auctions is also a poor public policy option, and contrary to the statutory provisions governing universal service funding.

The commenters urge that the Commission take a narrower approach, and implement the following steps:

1. Require that all IP-based voice traffic be subject to intercarrier charges, including access charges.

2. Implement a mechanism, after further study, which would allow incumbent LECs to bring intrastate access rates to interstate levels on a voluntary basis. A mechanism in the universal service fund could be used to accomplish this without a confiscatory effect.

3. Study further the use of forward looking pricing for any unified rate encompassing either jurisdiction for access and reciprocal compensation. The use of Faulhaber pricing is particularly not ready for prime time.

4. Implement the rules to curb carrier arbitrage, specifically concerning traffic identification and responsibility. The Commission should also declare that the use of split rating and routing ("Virtual NXX") is a form of prohibited arbitrage.

5. The Commission should further examine whether a numbers-based contribution method is auditable and sufficient to cover universal service funding needs.

Respectfully submitted,

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